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INDIGENOUS
ENVIRONMENTAL
NETWORK and NORTH
COAST RIVERS ALLIANCE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

INDIGENOUS ENVIRONMENTAL
NETWORK and NORTH COAST RIVERS
ALLIANCE,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF
STATE, et al.,

Federal Defendants,

Civ. No. 4:17-cv-00029-BMM

**DECLARATION OF BILL
WHITEHEAD IN SUPPORT
OF IEN PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT**

Hearing: May 24, 2018

Time: 10:00 a.m.

Judge: Hon. Brian M. Morris

and
TRANSCANADA KEYSTONE PIPELINE
and TRANSCANADA CORPORATION,
Defendant-Intervenors.

I, Bill Whitehead, declare as follows:

I am a member of the Board of Directors of plaintiff North Coast Rivers Alliance and have personal knowledge of the following facts.

1. I am a Native American, an enrolled member of the Assiniboiné & Sioux Nations, and born in Poplar, Montana, on the Fort Peck Indian Reservation, on June 10th, 1939. I have resided on the Reservation, on the Missouri River, all my life.

2. For fifty years, I have been active in advancing the interests of Native Americans on the Fort Peck Indian Reservation. I currently serve as Chairman of the Board of Directors of the Assiniboine & Sioux Rural Water Supply System, on whose Board I have served since 2007. I am also currently Chairman of the Board of the Native American Development Corporation of Billings, Montana, and have been a member of that Board since 1999. I have served two terms on the Fort Peck Tribal Council, and am a former Chairman of the Wolf Point Community Organization, and a former Board Member of the Fort Peck

Community College. And I have served as a state Legislator in the Montana House of Representatives. I am a college graduate with a B.A from University Northeastern Illinois, and a U.S. Army Veteran.

3. I am a member of the Board of Directors of the North Coast Rivers Alliance and have worked with my fellow Board Members through this litigation to oppose and prevent construction and operation of the Keystone XL Pipeline. I oppose this project because it would harm me, my family and my community here on the Fort Peck Indian Reservation, as I explain below.

4. I have worked for fifteen years to provide clean potable water to the Fort Peck Indian Reservation and surrounding rural communities, to remedy contamination of their ground water supplies due to irresponsible oil and gas development permitted by the United States government. Two decades ago, the Assiniboine & Sioux Nations established the Assiniboine & Sioux Rural Water Commission to construct the Wambdi Wahachanka “Eagle Shield” Water Treatment Plan and manage its operation. Upon completion, at an estimated cost of over \$300,000,000, this modern water treatment plant and vast pipeline delivery system will provide clean water to over 30,000 people, including residents, ranchers, and farmers on the Fort Peck Indian Reservation in Montana’s four northeastern counties (Roosevelt, Valley, Daniels, and Sheridan) to the Canadian

border. The project is approximately 70% completed. The intake for this water system is located on the Missouri River (in the town of Wolf Point, on the Fort Peck Indian Reservation) about 58 river miles downstream from the Fort Peck Reservoir.

5. I am familiar with the proposed Keystone XL Pipeline's route through ranch land north of the Milk River (a major tributary of the Missouri River), across the Milk River via a proposed underground pipeline, across extremely fertile farmland located in the Missouri River and Milk River alluvial deltas between those two rivers, and then across the Missouri River via a second proposed underground pipeline. From there it would pass south and east through eastern Montana through extensive ranch and farmlands and across many other tributaries of the Missouri River, including the Yellowstone River, before crossing Montana's eastern border and entering South Dakota.

6. The proposed route of the Keystone XL Pipeline poses a direct threat to the source of water for the Fort Peck Indian Reservation. The Keystone XL Pipeline would cross under the Milk River and the Missouri River just 10 and 14 miles upstream of our Wyota and Frazer irrigation intakes on the Missouri River, which supply the Fort Peck Reservation's extensive irrigation system, providing water to about 19,000 acres of highly productive farmland. Downstream of the

Wyota and Frazer irrigation intakes is the intake for the Wambdi Wahachanka “Eagle Shield” Water Treatment Plant that pumps water from the Missouri River, for potable use, to the inhabitants of the Fort Peck Reservation as well as other communities within Montana’s four northeastern counties.

7. I am familiar with the Wambdi Wahachanka “Eagle Shield” Water Treatment Plant’s vulnerability to contamination of the Missouri River upstream of this water treatment plant’s intake point. The proposed Keystone XL Pipeline poses an unacceptable risk of contamination of our Fort Peck Reservation water supply for at least four reasons. First, our Water Treatment Plant is not designed nor equipped to remove hydrocarbon contaminants such as benzene, ethylbenzene and p-xylene that are present in crude oil and the diluent that is used to facilitate its passage through pipelines.

8. Second, the proposed crossing of the Keystone XL Pipeline under the Missouri River is at a location of the river which is subject to extreme hydrologic pressure and movement for several reasons. It is located in the sediment delta that has formed where the Milk River and the Missouri River meet. The soils of this delta have a high clay component, which means that they expand and shrink greatly depending on their moisture content, and are easily eroded by water movement. The course of the Milk River as it passes through this delta varies

widely over time, as indicated by its extremely meandering path through the delta with many oxbows. Roads maintained by local farmers as well as by the Fort Peck Reservation are subject to extensive erosion due to these frequent meanders of the Milk and Missouri Rivers through the highly erosive clay soil.

Consequently, soil erosion and movement of the riverbanks of both the Milk River and the Missouri River, makes for a highly unstable substrate for the proposed Keystone XL Pipeline.

9. The third reason that the Keystone XL Pipeline poses an unacceptable risk to our water supply is that its crossing of the Missouri is located just a few hundred yards downstream from the Fort Peck Reservoir Spillway. This spillway provides emergency relief from high water conditions in the reservoir. The Fort Peck Reservoir is the world's largest earthen-filled dam. It stores approximately 19,000,000 acre-feet of water (i.e., more than four times the size of Shasta Reservoir, California's largest) and thus is one of the largest reservoirs in the world. During high water conditions, when water must be released down the spillway into the Missouri River (immediately upstream of the confluence with the Milk River), the tremendous hydrologic force of the released water can cause extensive erosion of the Missouri River's riverbed and river banks. Thus, the proposed placement of the Keystone XL Pipeline at this location would subject the

pipeline itself to highly erosive forces of the water released from the Fort Peck Spillway during high water conditions.

10. The fourth reason the Keystone XL Pipeline poses an unacceptable risk of contamination to Fort Peck Reservation's water supply is that the Missouri River is subject to freezing during the winter. When it is frozen solid on the surface, it would be virtually impossible to access and repair any breach in an oil pipeline passing underneath the river. It would also be very difficult to locate the specific point at which the pipeline might be breached. The presence of thick ice on this river course also poses hazards during the season of spring breakup, when ice forms dams that can impede the flow of water, resulting in unstable surface conditions on the ice and the potential for the sudden release of waters temporarily dammed behind the ice. Thus, the unpredictable winter conditions on the Missouri River can also cause violent erosion of the riverbed and river banks, and thus pose additional risks for the potential breach of, and contamination from, any underground oil pipeline located here.

11. For each of these reasons, the Water Commission for the Assiniboine & Sioux Rural Water Supply System (of the Assiniboine & Sioux Tribes of the Fort Peck Indian Reservation) voted unanimously to oppose the Keystone XL Pipeline and to support the lawsuits filed against it. A true copy of our Water

Commission's Resolution opposing the Keystone XL Pipeline is attached as Exhibit 1 to this Declaration.

12. Our Water Commission opposes the Keystone XL Pipeline for several other reasons. As I have explained, the Wambdi Wahachanka "Eagle Shields" Water Treatment Plant is not designed to remove contamination by an upstream pipeline carrying tar sands crude oil. Were there to be a tar sands crude oil leak contaminating the Missouri River, our water treatment plant would have to close, resulting in the loss of the sole water supply for over 30,000 residents of the Fort Peck Reservation and surrounding communities within Valley, Daniels, Sheridan, and Roosevelt counties. The release of tar sands crude oil from the Keystone XL Pipeline would pose particular harm to the Missouri River because tar sands crude is exceptionally difficult to clean up, and could remain in the riverbed and river banks of the Missouri River for decades. Additionally, because tar sands crude is so viscous, it requires thinning with a toxic solvent known as diluent to allow its transport through a pipeline. The resulting mixture is called dilbit. When dilbit escapes from a pipeline, the solvent quickly forms a gas that evaporates in waves of toxic air (which would necessitate evacuation of both the area of the spill and all downstream communities such as Wolf Point and Poplar on the Fort Peck Reservation), while leaving behind the heavy, sticky tar sands crude, which then

sinks to the bottom instead of floating like a lighter conventional oil. Tar sands crude oil leaks in other rivers, such as Michigan's Kalamazoo River, have required many years to clean up, and in some cases, the contamination remains indefinitely.

13. Based on these facts, the proposed Keystone XL Pipeline's construction and operation poses a direct threat to the water supply of the Assiniboine & Sioux Nations, the residents of Montana's four northeastern counties up to the Canadian border—indeed over 30,000 people when our project is completed—as well as to myself, my extended family and relatives, and members of our Assiniboine & Sioux Nations, whose lives are woven tightly with earth's water, air, land, and animals as part our identity. As a member of the Board of Directors of North Coast Rivers Alliance, I join with our membership in adamantly opposing construction and operation of the Keystone XL Pipeline.

I declare under penalty of perjury that the foregoing facts are true and correct of my personal knowledge, that I am competent to and if sworn would so testify, and that this declaration was executed in Poplar, Montana, on February 8, 2018.


BILL WHITEHEAD

CERTIFICATE OF SERVICE

I, Stephan C. Volker, am a citizen of the United States. I am over the age of 18 years and not a party to this action. My business address is the Law Offices of Stephan C. Volker, 1633 University Avenue, Berkeley, California 94703.

On February 9, 2018 I served the following document by electronic filing with the Clerk of the Court using the CM/ECF system, which sends notification of such filing to the email addresses registered in the above entitled action:

**DECLARATION OF BILL WHITEHEAD IN SUPPORT OF IEN
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 9, 2019

/s/ Stephan C. Volker